

1911

Editorial

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Journal of the American Institute of Criminal Law and Criminology

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EDITORIAL COMMENT.

COMMITTEES OF THE AMERICAN INSTITUTE OF CRIMINAL LAW AND CRIMINOLOGY.

In the last issue of the JOURNAL we summarized the results of the first year's work of the Institute. At a recent meeting of the executive board the work for the second year was considered and mapped out. It includes the study of seven different topics, each

COMMITTEES OF THE INSTITUTE.

of which will be made the subject of investigation by a special committee. The following is a list of the topics and the committees which will conduct the investigations:

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CRIMINAL PROCEDURE IN ENGLAND.

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CRIMINAL PROCEDURE IN ENGLAND.

We publish in this number of the JOURNAL the second and concluding part of Lawson and Keedy's report on English procedure. Their investigation was undertaken at the request of the American Institute of Criminal Law and Criminology, and they were instructed to ascertain in what particulars, if any, English methods of procedure were superior to those in vogue in the United States, and whether, in their judgment, any of those methods were suitable for adoption in this country. They spent four months in the courts of London and at the assizes, and were afforded every facility by the bench and bar of England for conducting their inquiry. Their report is, we believe, a fair and accurate presentation of the facts and deserves the careful study of every member of the American bench and bar who desires to see an improvement in our own methods of procedure. Among the features of English procedure dwelt upon in their report and which should be of special interest to Americans are: the remarkable facility with which juries are selected, the dispatch with which trials are conducted, the insignificance which is attached to formal defects in indictments and to technical errors generally, the non-partisan character of the prosecution, the small number of appeals taken and the low percentage of reversals, and the important part played by the judge in the conduct of the trial. The authors of the report found that in England it usually requires no longer to select a jury than is necessary to call their names, that challenges are almost unknown, that opinions of jurors based on newspaper reports or hearsay evidence do not constitute a disqualification, and that jurors are rarely examined on their *voir dire*, as is the common practice in America. The old and rigorous rule with regard to particularity in the framing of indictments has disappeared and

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little importance is now attached to formal defects. Comparatively few objections are raised by opposing counsel to the admission of evidence, and wranglings over questions of this kind, such as are a common feature of important trials in this country, are almost unknown. The division of the bar into two classes has the advantage of securing trained and experienced counsel so that trials are rapidly expedited, though it has the disadvantage of separating the prisoner from his counsel and makes necessary the payment of a double fee—one to his counsel and one to his solicitor. Both fees combined, however, are usually smaller than the single fee paid in America.

The English judge takes a very active part in the proceedings and directs the trial at every stage. If he is satisfied at any stage of the proceedings that the evidence presented is not sufficient to warrant a conviction, he may stop the trial and direct a verdict of acquittal. He may call and examine witnesses with a view to bringing out more clearly the facts of the case. He requires counsel to confine themselves strictly to relevant and proper questions and does not permit wranglings over immaterial matters merely for the purpose of getting error into the record or delaying the trial. In an address to the jury he reviews the evidence in detail and expresses his opinion on the weight of the testimony introduced and admitted. He may comment on the failure of the accused to testify as well as upon the character and demeanor of witnesses. In his summing up he endeavors to sift out the material evidence from the immaterial, to clear the issue of confusions into which the jury may have been misled by opposing counsel and place the material evidence before it in such a way that it is readily intelligible to untrained minds. This done the jury is left to decide the case as the evidence appears to justify. Under such circumstances verdicts are quickly reached by the jury, usually without the necessity of leaving the box. Cases are expedited with remarkable dispatch and the dockets of the courts are rarely congested. Of sixteen cases which the committee saw tried in the Central Criminal Court of London, ten of which were for murder, arson or rape, only three consumed more than two hours and a half, and several were disposed of in an hour and a half. Appeals are comparatively few, though every convicted person now has the right of appeal. They are quickly dispatched, fifteen cases being disposed of by the Court of Criminal Appeal in one day during the attendance of the committee. This court, we are told, considers that its principal

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function is to administer "substantial justice," and it has not therefore laid stress on technicalities either for or against the defendant. While the committee finds that the number of judges empowered to try indictable offenses in England is larger than is popularly supposed in America, the judicial force is nevertheless small as compared with that here.

Among the recommendations of the committee which merit consideration are: that objections to indictments should be made before evidence is heard, with permission to amend formal errors at once; that examinations of jurors on their *voir dire* should be limited; that the prosecuting attorney should be required to make an impartial presentation of the facts to the jury; that the practice of counsel in seeking to get error into the record should be discontinued; that new trials should never be granted for technical errors; and that the judge should be given a larger share in the conduct of the trial, such as the right to overrule technical objections, to prevent counsel from asking irrelevant questions, and to sum up the evidence and direct the jury as to the law applicable thereto.

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THE CASE OF CRIPPEN.

If concrete examples of the superior efficiency of English methods of criminal procedure as compared with those of the United States are desired they can be furnished in abundance. The Thaw and Rayner cases of two years ago afford striking illustrations of the widely different ways in which criminal cases are disposed of in the two countries. The facts in the two cases were essentially the same. In each the charge was murder and in each the plea was insanity. The first trial of Thaw with its disgraceful accompaniments dragged on through a period of twelve weeks and finally resulted in a disagreement of the jury. The second trial, concluded a year and a half after the offense was committed, resulted in a verdict of insanity, and has since been several times renewed by means of habeas corpus proceedings, and the end is probably not yet. While the Thaw performance was being enacted Rayner's case was called in London and disposed of in five hours, to the complete vindication of the majesty of the English law.

Compare again the Tucker and Crippen cases. Tucker murdered Mabel Page at Weston, Mass., March 31, 1904, and was arrested April 4. He was indicted June 9, though the trial did not begin until January 2, 1905. It was concluded 22 days later, on

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January 24. The usual motion for a new trial, accompanied by a bill of 26 exceptions, followed. On January 22, 1906, a year later, the motion for a new trial was denied by the Supreme Court. Five days later Tucker was sentenced to be electrocuted. A petition was then filed before one of the Justices of the United States Supreme Court for a writ of error, and in the meantime a petition for pardon was laid before the governor of the state. The governor thereupon asked the Supreme Court for an opinion concerning his power in the premises. On May 29 the court gave its opinion; the governor thereupon refused to interfere, and on June, 1906, Tucker was executed, two years and three months after his arrest. Crippen, on the other hand, was arrested July 21 and was arraigned August 29. The trial began October 17. The jury was impaneled in eight minutes, the trial was concluded in four days, a verdict of guilty was returned in 29 minutes, appeal was taken and promptly disposed of, and on November 23, five weeks after the trial began, Crippen paid the penalty for his crime. The trial was conducted in an orderly, dignified and businesslike manner and with every regard for the rights of the accused. No one, we believe, has advanced a single good reason in support of the claim that Crippen's right to a fair trial was in some way abridged. We are told by the London correspondent of the *New York Sun* that only once during the trial did counsel protest against anything that happened. The judge, Lord Alverstone, took an important part in the trial. Not a witness was examined or cross-examined by counsel on either side without his intervention. He repeatedly asked questions of witnesses both for the prosecution and the defense so as to make their answers clearer, and what little was to be said in Crippen's favor he pointed out in the summing up. His whole lucid retelling of the story from the evidence, says an eyewitness, could not have been more damning had it come from the mouth of the prosecuting counsel. Indeed, its impressive delivery and its aloofness from all personal feeling made it far more convincing of the prisoner's guilt than the final address of the prosecution to the jury. The participation of the judge in the trial has been the subject of some criticism by American lawyers, but many members of our bar, like President Taft, have expressed an opinion in favor of allowing the judge a larger share in the trial of cases.

The trial from first to last, says the *London Times*, showed English criminal justice at its best, and the verdict will be approved

by everyone who has followed the evidence. The accused was, we are assured, treated with studied courtesy; the counsel for the defense, while doing his full duty to his client, appealed to no vulgar passions and indulged in no irrelevant rhetoric; the jurors were patient, silent and attentive, and the judge did full justice to the prisoner's defense.

The dispatch, dignity and freedom from technicality which characterized the Crippen trial contrasts markedly with the intolerable delays, the long-drawn-out wranglings and spectacular displays that have generally characterized similar trials in this country. It would be unfair to say that if Crippen had been tried in this country he would have escaped, but no one doubts that the trial would have consumed weeks and probably months in the lower court, to say nothing of the time consumed in appeals, reversals and retrials. The British procedure is admirably adapted to getting at the truth of cases with a minimum expenditure of time and effort. The New York State Commission on the Law's Delay (1903), made up of leading members of the bar, reported that it was "profoundly impressed" with English methods of procedure, declared that the English courts from having been the most dilatory in the world had recently become the most efficient, and concluded that "we could not do better than adopt some of these modern methods of procedure which have been so thoroughly tested in England and have worked so well." (Pp. 32, 34.) Much of our practice is out of harmony with modern social and economic conditions, but it is retained and tolerated because "made in England," though singularly enough it is now obsolete in the land from which it came, having been displaced by more modern methods.

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THE WISCONSIN CONFERENCE ON CRIMINAL LAW AND CRIMINOLOGY.

On November 26 and 27, 1909, the Wisconsin Branch of the American Institute of Criminal Law and Criminology held its first annual conference in the city of Madison, the proceedings of which have recently been published (the Secretary's office, Law School, University of Wisconsin, pp. 66). The reasons for calling the conference were thus stated:

"The multiplying instances of the delay or seeming miscarriage of justice, together with the indications that crime is not diminishing in this country as it is in the most progressive European countries, are responsible for the widespread feeling that American criminal law and administration are ineffective as a corrective system and so fail adequately to protect society; that as President

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Taft puts it, 'The administration of criminal law in this country is a disgrace to our civilization.' Defective organization of courts, cumbrous and costly procedure and excessive emphasis on technicalities afford an undue advantage to the law-breaker of means and deepen the erroneous impression that there is one law for the rich and another for the poor. Lax enforcement of laws and too frequent abortive attempts to punish wrong-doers breed a growing contempt for law and order. Many go so far as to assert that prompt even-handed justice is not to be expected under the present social system. The seriousness of a breakdown in the confidence of the people in the impartiality and efficiency of their courts is coming to be recognized and there is a growing disposition among thoughtful men, both professional and lay, to heed these criticisms and to weigh the remedies proposed.

"Moreover, the sciences of Criminal Anthropology and Sociology are calling for a recasting of ideas the world over, and are making it evident that legislation and legal progress in the future must be founded upon a scientific study and understanding of the matters to which the legal profession and the public are only just beginning to pay attention. A thorough reconsideration of criminal law and procedure in the light of the several sciences that contribute to criminology must soon take place.

"To consider what foundation, if any, exists for the criticisms directed against our administration of punitive justice and to inquire what light the newer knowledge throws on the methods of combating crime, it is proposed to call together for a two days' conference those in Wisconsin most interested in criminal law, criminal procedure and criminal law administration."

To each of seven committees a number of topics—forty altogether—were referred, and each after full deliberation, reported a series of resolutions embodying its conclusions thereon. These resolutions represent the enlightened views of a body of practicing lawyers, jurists and criminologists, and altogether they constitute what might well be accepted as the basis for important reforms in the criminal law and procedure of many of our states. This first conference has recently been followed up by a second, the proceedings of which are summarized on another page in this number of the *JOURNAL*. The example of this progressive commonwealth should be followed by other states, and, if we may single out a few of those where a beginning should at once be made, we would name California, New York and Pennsylvania.¹ Such conferences afford the means for an interchange of ideas by lay scientists and lawyers and for reaching a common understanding on points upon which there has heretofore been too much variety of opinion. Wisconsin now has two different statutes requiring that criminal justice shall be administered without regard to technicality or harmless error, and it has a Supreme Court which has

¹Since the above was written the Pennsylvania Branch of the American Institute of Criminal Law and Criminology has been organized at Philadelphia.

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announced that it purposes to carry out the spirit of those statutes to the best of its ability. That it is doing this the decisions of the court referred to on another page of the JOURNAL afford conclusive evidence. In California particularly, where the crying need for reform is now being discussed by the newspapers, the courts, state and city bar associations, civic organizations and even the churches, a state conference such as those which have been held in Wisconsin, would, in our opinion, clear up many points now in dispute and lay down the principles which could be made the basis for a program of constructive reform. J. W. G.

WISCONSIN JUSTICE WITHOUT TECHNICALITY.

The Supreme Court of Wisconsin is making a record for administering justice without regard to technicality. In a previous issue of the JOURNAL we called attention to a decision of that court in which it refused to reverse a conviction for an error which consisted in the omission from an indictment of the useless but sacrosanct phrase, "against the peace and dignity of the state," saying that this phrase was nothing but a "rhetorical flourish" which added nothing to the indictment, and, of course, did not prejudice the accused. In the more recent case of *Hack v. State* (124 N. W. Rep., 492), decided January 10, 1910, the Supreme Court refused to reverse a conviction for the inadvertent omission by the trial court to arraign the accused and enter a plea for him. Wisconsin has a statute, enacted in 1898, which requires the Supreme Court to disregard errors that do not affect the substantial rights of the accused; and also a statute, enacted in 1909, which declares that no criminal judgment shall be set aside or new trial granted for an error in the admission of evidence unless the substantial rights of the complaining party have been affected. The accused in this case, who had been convicted of selling liquor, and who by a singular oversight had not been formally arraigned, took an appeal on the ground that the omission had worked an injury to his case. He knew perfectly well the offense with which he was charged and was allowed to make his defense as fully and effectively as if a plea of not guilty had been entered. He was aware of the failure to arraign him, but remained silent and made no objection at the time. The court held that the silence of the defendant, especially in non-capital cases, should be considered as a waiver of the privilege when it appears that he is fully informed as to the charge against him and is not otherwise prejudiced by the

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omission of that formality. It declared that the old rule which considered arraignment and plea as essential had its origin in an age when the accused could waive nothing, when he could not testify in his own behalf and was not allowed counsel. The rule may have been justified then, the court went on to say, but "thanks to the humane policy of modern criminal law, all these conditions have changed," and the reason which in some measure justified the former attitude of the courts has disappeared, save perhaps in capital cases. "The accused is entitled to every constitutional right, but he should not be allowed to juggle with them. He has no right to be silent and then after the decision has gone against him raise the plea that he was not given his right. Should he be allowed to play his game with loaded dice? Should justice be allowed to travel with leaden heel because the defendant has secretly stored up some technical error not affecting the merits, and thus secure a new trial because, forsooth, he can waive nothing? We think not. We think that sound reason, good sense and the interests of the public demand that the ancient rule framed originally for other conditions be laid aside, at least so far as all prosecutions for offenses less than capital are concerned. We believe it has been laid aside in fact . . . by the former decisions of this court. It is believed that this court has uniformly attempted to disregard mere formal errors and technical objections not affecting any substantial right and to adhere to the spirit of the law which giveth life rather than to the letter which killeth."

This decision overrules a long line of earlier decisions by the Wisconsin Supreme Court and is also contrary to the doctrine laid down by the United States Supreme Court in the *Crain* case, that arraignment and plea are essential. The court announces that it purposes to administer criminal justice without regard to immaterial errors or inconsequential defects, and we are certain that this enlightened stand will commend itself to fair-minded lawyers and laymen alike as being in accord with reason, common sense and the public interest.

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THE LAW MADE RIDICULOUS.

The particularity which our legal practice insists upon in the framing of indictments is becoming a serious evil in American criminal procedure and results in frequent miscarriages of justice. In previous numbers of the *JOURNAL* we have called attention to many cases in which this has happened. Indictments which are not over-

loaded with meaningless verbiage and circumlocution, alleging over and over again the most obvious facts in accordance with the sacrosanct forms of bygone centuries, will not be sustained. As Dean Lawson pointed out in his article on "Technicalities in Criminal Procedure," published in the May number of this JOURNAL, the English practice insists upon no such unnecessary particularity, but is satisfied with a brief and simple indictment framed in the plain language of everyday use. Simplification of procedure from the framing of indictments to the hearing of appeals is one of the crying needs of our court practice.

An example in which justice was sacrificed for the "sacred forms" and the need for change is thus described by the editor of the *Green Bag* in a recent number of that magazine: "In the cases recently instituted against the National Packing Company in Chicago failure to insert a half-dozen words in an indictment undid the work of weeks—of months.

"Lengthy investigation on the part of government officials; extended sessions of a special grand jury; examination of witnesses from widely separated sections of the country; weeks of labor by lawyers, and the paying out of enormous sums of money, all counted for nothing simply because a grand jury had overlooked a trifling averment in making its return to the court.

"The prosecution, in the formal presentation of the case, neglected to set up an obvious fact, namely: that the defendant was engaged in business having to do with interstate commerce! There were hundreds and hundreds of words in that indictment—words that repeated over and over again what the defendant had done, and wherein it was charged with violating the law. Its language left no room for mistaking the character of the accusation and what the government expected to prove. All the notice that justice, or common sense, could ask, had been given the defendant. Indeed, the charge itself made it clear to every mind that it was proposed to show the company engaged in the sort of business referred to. This, however, had not been set out, formally, in an extra lot of legal verbiage, and for that reason, and that reason alone, the case had to be dismissed. No single right would have been lost had the case gone to trial on the indictment. In the event the government had failed to show that the defendant company was engaged in interstate business, then there could have been issue against, and the assumption that there was an effort making to prosecute for an offense

which could not exist made necessary a most wretched contortion of human reasoning.

"Still, the judge in his ruling in the case did nothing more than follow the law. In the face of such occurrences as this—and they are numerous—is it at all surprising that our courts are congested with "business," and that it is next to impossible to secure a prompt and satisfactory administration of justice? Is it at all surprising, either, that the public is fast becoming disgusted with the law as a means of punishing crime, or adjudicating civil differences? And there is nothing strange that we find the President of the United States, himself one of the foremost lawyers of the country, protesting against senseless judicial delays.

"Is it not about time we were getting away from webs woven about our courts of justice by centuries of practice and precedent? And the lawyers of the country should lead the way in this matter instead of aiding in the perpetuation of the evil and its inevitable augmentation."

J. W. G.

TUBERCULOSIS IN PRISONS.

That the problem of tuberculosis in our prisons is a matter of vital importance is borne upon us from many sides. Not long ago the statement is alleged to have been made by the warden of the Western Penitentiary of Pennsylvania that approximately 300 out of 1,300 inmates of that institution were suffering from tuberculosis. In private conversation recently the warden of one of our eastern state prisons expressed his belief that 60 per cent of the inmates of his institution had tuberculosis in some degree. In New York state there is at Clinton prison a well-equipped ward for tuberculous convicts transferred from the several state prisons. Since that ward was established in the early nineties the death rate from tuberculosis in the three state prisons has fallen remarkably, the death rate in 1891, being, for instance, for the prisons of Sing Sing, Auburn and Clinton seventy-six, and the death rate fifteen years later, in 1906, being only seven, out of a population of 3,466. In the last three years the death rate has advanced slightly, but in 1909 was only 18 in a population of 4,439.

In most of our prisons, and particularly in our lesser correctional institutions, an enormous amount of preventive work remains to be done. The National Association for the Study and Prevention of Tuberculosis estimates that there are in the State, Federal and local prisons and jails of the United States 12,000 tuberculous

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prisoners, and that on an average about fifteen per cent of the prison population of the country is affected with this dread disease. Only twenty-one prisons in fifteen states and territories have provided special places for the treatment of their tuberculous prisoners and these have accommodations for only 800 patients. "In three-fourths of the major prisons, and in practically all of the jails of the country, the tuberculous prisoner is allowed freely to infect his fellow prisoners, very few restrictions being put upon his habits."

It is a striking fact that when the state of New York began to transfer tuberculous prisoners from the Sing Sing and Auburn prisons to Clinton, in the Adirondacks, not only did the death rate in the two former prisons fall from over thirty at Sing Sing and from over forty at Auburn to less than ten, but the death rate at Clinton fell also. Since 1893, the death rate at Clinton has been above ten per cent only once, namely, in 1902, when it reached 11. If this can be done in New York State by the creation of a special ward, and by the transference of tuberculous prisoners thereto, what cannot other states do?

O. F. L.

CONCLUSIONS OF THE INTERNATIONAL PRISON CONGRESS.

The most vital conclusion of the International Prison Congress of 1910 was formulated by the first section, but the discussion in all the other sections showed the influence of the same modes of thought. The first section went further than the Brussels Congress of 1900, and after a prolonged and vigorous debate distinctly declared that the Congress approves the scientific principle of the indeterminate sentence. Of course, it was implied that this sentence should be used with moral and mental defectives, and also with juvenile delinquents who require reformation and whose offenses are due chiefly to circumstances of an individual character. But this system was favored only upon condition that the treatment of each offender should be individualized and that a board of parole or conditional release should be properly constituted, free from all outside influences, and contain at least one representative of the magistracy, one representative of prison administration, and at least one representative of medical science.

The majority of the delegates favored in principle the indeterminate sentence in its full extent, believing that a delinquent should be held for protection of society and for his own reformation, and that until these purposes are attained his liberty should be abridged: but recognizing the present state of public opinion, not

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to say inveterate prejudice, the Congress further said that it is advisable to fix the maximum penalty only until the nation has come to understand the new ideas.

The other decisions of the section on criminal law related to the effects of judicial decisions in foreign countries and to the combinations of criminals.

The resolutions brought in by the second section, which dealt with institutions of correction, related to methods of applying the same fundamental ideas. This section declared that no person should be assumed to be incapable of improvement; and that an earnest effort should be made for the reformation of every criminal by education, religion and industrial training. The Congress approved the declaration, upon which all agreed, that the reformatory system is incompatible with short sentences and that time is a necessary element in every educational process. Here, again, the Congress insisted upon having a board of liberation or parole with suitable guardianship and supervision, without which the indeterminate sentence is never fairly tried.

The view was expressed that prisoners awaiting trial and those serving short sentences should not be mingled indiscriminately together, but should be confined in separate cells to prevent mutual corruption.

The discussion and resolutions relating to the treatment of vagrants and drunkards presented the fundamental idea of the Congress with particular application to those that are dangerous to society because of their deep-seated habits of wandering or alcoholism. To make such treatment effective a careful classification must be made of those who are incapacitated or infirm, accidentally mendicants or vagrants, and professional mendicants or vagrants. The first need assistance until they shall have recovered the ability to support themselves; the second should receive public or private assistance under conditions where work may be made compulsory; while the third class should be subjected to severe repressive measures of a nature to check recidivism. Manifestly, this would put an end to dealing with this miserable class of delinquents by jail treatment and short sentences in city workhouses. Indeed, the Congress urged that those who needed training to give them physical and moral vigor should be placed in colonies where agricultural and industrial training is continued long enough to build up health, give thorough training and act as a deterrent to other offenders.

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In order to supervise the working of the criminal law of a state, the state itself must exercise central control of all the institutions, large and small. All penal institutions, it was resolved, including houses of detention and jails, should be under the control of a central authority. Experience in all countries, for example, in England, has demonstrated the unwisdom of the American method of leaving to legal authorities the administration of the criminal law of a commonwealth. Local administration is very generally characterized by inequality, apparent injustice, low standards and want of recognition of the world's experience.

One of the most important conditions of educative treatment is physical and psychical examination by experts of all persons subjected to the reformatory methods. Several times this conviction was expressed in the discussions and in the resolutions. This fact marks a growing conviction in the civilized world that reformation must be carried forward upon sound educational principles. Another side of the same conception came out in the admirable address of the next president of the International Prison Commission, Sir Evelyn Ruggles-Brise. Very tactfully, but distinctly, he dwelt upon our failure to keep proper records and present reliable statistics in regard to the working of our institutions. The German students of our reformatory system have often thrown this in our face and have said after a visit to Elmira and our other reformatories: "We believe you are doing good work, but your records and statistics throw no light upon the problems."

Without improving the structure of our prisons, reformatories, houses of correction and jails, the best methods of administration will lack some element of success. Everywhere the visitors to the Congress went they criticized our arrangement of cell blocks with a body of impure air about them, and everywhere defective lighting. In a few cases the European form of the cell which permits direct ventilation from outside and direct access of sunlight was noted with approval, but these are rare exceptions; and, therefore, all of the European delegates were compelled to comment unfavorably upon the essential features of our prison architecture. The jails and city lockups especially came in for condemnation in the name of hygiene and justice.

The treatment of children and youth offered very little that was novel to Americans familiar with our juvenile court and all of the institutions and agencies which act as its auxiliaries. In

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this respect we received the high praise which we deserve, although the administration in some cities is far from our own ideals.

The Proceedings of the Congress in the French language can be had by the payment of the ordinary fee of 25 francs. Most of the papers have already been printed, and final bulletins containing all the discussions and conclusions of the Congress will soon be sent to the subscribers.

It was exceedingly gratifying to Americans that the invitation of our Congress was accepted by more nations than in any previous Congress. South America and China were among the regions of vast population to send participants. Incidentally, the Congress was a factor in hastening the day of "the parliament of man, the federation of the world."

The long journey of over two thousand miles during the fortnight preceding the Congress itself brought together the representatives of the nations in a friendly and familiar way, and much of the spirit of co-operation and unanimity of conclusion were due to the personal conversations of this journey and the speeches at banquets which helped to prepare the minds of all for the Congress. Unquestionably, our diplomacy will be somewhat easier and wiser for this assembly of earnest and thoughtful people from many lands.

C. R. H.

PENAL RESPONSIBILITY AND FREE-WILL.

The accepted principles of the criminal law as to responsibility for crime are frequently questioned nowadays on the ground that such responsibility is based upon the doctrine of free-will, and that modern scientific theories teach that psychic processes are mechanical and admit no freedom of will or choice. In an article on "Person and Personality," by Dr. Paul Carus in *The Monist* for July, 1910, there is a discussion of free-will in connection with responsibility which is well worth attention. "Responsibility," he says, "presupposes that a person is not like a brute which blindly obeys its instincts, but that he can restrain himself; that he does not heedlessly rush into committing a deed, but that he can deliberate and choose. Thus he does not depend upon the present only, but can take into consideration the eventualities of the future. He can make his action an expression, not of the fleeting moment, but of his entire character; he may let the better, though more quiet, motives have a chance to assert themselves against the lower impulses, even though these are louder and at times more vigorous. In a word, responsibility presupposes

free-will guided by moral principles, which means that we expect a person to make his decisions with the good intention of doing the right thing. . . . Free-will and determinism were formerly held to be irreconcilable, especially in the old theological disputations, but the difficulty is *de facto* a pseudo-problem. It is based upon a confusion of the ideas of compulsion and determinedness. Freedom of will does not mean that the will is undetermined and indeterminable, a matter of haphazard chance like a throw of dice, but that it is free to act according to its own nature. An act of free-will is the result neither of coercion nor of chance, but the necessary outcome of a free, that is to say unhampered, decision, in which the determinant is the actor's own character. He only can imagine that free actions in order to be truly free are not, nor ought they be, determined by causation who conceives of causation as a law in the sense of an enactment which enforces certain rules as a government would enforce its decrees through the power of police forces. . . . If without being compelled by anyone or any outside power I act in such a way as to acknowledge the deed to be my own, it is called an act of my own free-will, which, being of a definite kind and following definite principles, will, under given conditions, result in definite actions. . . . An act of free-will is not an arbitrary deed which would form an exception to the law of cause and effect. An act of free-will is as much determined by conditions as any other event, but the decisive factor in an act of free-will is not any extraneous circumstance, but the character of the acting person. To state it briefly, we define free-will as a will unimpeded by compulsion."

Dr. Carus thus clearly shows that we need give up neither our notions of causality nor of freedom of will. To set in opposition the concepts of causality and free-will involves two errors—the identifying of causation with coercion and the semi-personifying of will as a separate and distinct principle. Dr. Carus further says: "There is no special faculty called the will. By will psychologists understand 'the tendency to pass into act.' A motor idea when stimulated one way or another innervates its respective set of muscles and makes them contract, thus serving the purpose of the intention, and the tension preceding the act at the moment of its release is called 'will.' But it is essential that the process should not be purely physiological but must pass into consciousness—the domain of psychology—while touching the motor idea."

The same misconception has sometimes obtained in considera-

tions of law in general as well as of criminal law, as, for instance, in Korkunov's discussion of freedom of will in his "General Theory of Law," and leads to erroneous results. As was well said by Dr. Brinton in his "Basis of Social Relations": "That intellectual actions are governed by fixed laws was long ago said and demonstrated by Quetelet in his remarkable studies of vital statistics. That the development of thought proceeds 'under the rule of an iron necessity' is the ripened conviction of that profound student of man, Bastian. We must accept it as the verdict of science. What, then, becomes of individuality, personality, free-will? Must we, as the great dramatist said, 'confess ourselves the slaves of chance, the flies of every wind that blows'? Not yet. That we are subject to our surroundings and our history; that our forefathers, though dead, have not relaxed their parental grasp; that time, clime and spot master thought and deed, is all true. But above all its Volition, Will, a final, insoluble, personal power, the one irrefragable proof of separate existence, not itself translatable into Force, but the director, initiator, of all forces." E. L.